

# WORK AGREEMENT SYSTEM (OUTSOURCING) FOR EMPLOYEES USING THE WORK CONTRACT SYSTEM (PKWT)

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Submitted : 09-05-2026 Accepted : 08-06-2026 Published : 10-07-2026

## Abstract

The increasingly competitive business environment has encouraged companies to implement outsourcing systems as an operational efficiency strategy. One of the most widely applied employment relationships within outsourcing is the Fixed-Term Employment Agreement (Perjanjian Kerja Waktu Tertentu/PKWT). Although this system has been regulated under Indonesian labour law through Law Number 13 of 2003 concerning Manpower as amended by Law Number 6 of 2023 concerning Job Creation and Government Regulation Number 35 of 2021, its implementation continues to raise various legal issues, particularly concerning the protection of workers' rights. This research aims to analyze the legal framework governing outsourcing employment agreements using fixed-term employment contracts and to examine the legal protection afforded to outsourced workers under Indonesian positive law. The study employs normative legal research using statutory, conceptual, and analytical approaches. The research concludes that the post-Job Creation Law regulatory framework provides greater flexibility for companies in implementing outsourcing practices. Nevertheless, legal protection remains mandatory through regulations governing wages, social security, occupational safety and health, compensation for fixed-term employment agreements, and industrial dispute settlement mechanisms. In practice, however, several obstacles remain, including the improper use of fixed-term contracts, weak labour supervision, and low compliance by certain companies with labour regulations. Therefore, stronger government supervision and more effective labour law enforcement are required to achieve a balance between investment interests and workers' legal protection.

**Keywords:** Outsourcing, Fixed-Term Employment Agreement, Legal Protection, Labour Law.

## INTRODUCTION

Indonesia is a state based on the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which requires all legal relationships, including employment relations, to be conducted based on the principles of legal certainty, justice, and protection of human rights. Employment relations are not merely viewed as a civil relationship between workers and employers, but also contain a social dimension that places the state as the party obligated to provide protection to workers, a group economically disadvantaged compared to employers.

The development of globalization, the industrial revolution, and increased competition in the business world have brought significant changes to employment patterns in Indonesia. Companies are required to improve operational efficiency, productivity, and competitiveness to survive in the dynamics of the national and international economy. One emerging strategy is the use of an outsourcing system, which allows companies to hand over part of their work to labor service providers.

The outsourcing system is essentially a form of employment relationship involving three legal entities: the user company, the labor service provider company, and the workers themselves. The characteristics of this employment relationship differ from conventional employment relationships because the worker is administratively in an employment relationship with the service provider, while the work is performed for the benefit of the user company. This situation often raises various legal issues regarding who is responsible for fulfilling workers' rights in the event of labor violations.

Regulations regarding outsourcing in Indonesia underwent significant changes following the enactment of Law Number 11 of 2020 concerning Job Creation, which was later enacted as Law Number 6 of 2023 and Government Regulation Number 35 of 2021. These regulations provide companies with greater flexibility in using outsourced labor by removing restrictions on types of work that previously only permitted supporting work. This policy is intended to increase investment and expand employment opportunities, but at the same time raises concerns about reduced legal protections for workers. On the other hand, the use of Fixed-Term Employment Agreements (PKWT) in outsourcing practices remains a growing issue. Many companies repeatedly use PKWTs for permanent work, thus depriving workers of the opportunity to obtain permanent employment status. These conditions impact job security, welfare guarantees, and the protection of workers' normative rights as guaranteed by Indonesian labor law.

Another problem relates to weak government oversight of the implementation of outsourcing provisions. Labor inspectors often face limited resources, while outsourced workers generally have a weak bargaining position and are reluctant to fight for their rights for fear of losing their jobs. Consequently, violations of workers' rights, such as wages, social security, leave rights, and compensation for non-permanent employment contracts (PKWT), are still common in industrial relations practices. Based on these conditions, a comprehensive legal review is needed regarding the outsourcing work agreement system for workers using the work contract system (PKWT). This will determine the extent to which applicable legal

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regulations are able to provide legal protection, legal certainty, and fairness for workers while still allowing room for business development in Indonesia.

## **METHODS**

This research is normative legal research, which examines legal norms contained in laws and regulations, court decisions, expert doctrine, and various legal literature related to the outsourcing system for workers using the fixed-term employment contract (PKWT). This normative legal research was chosen because it focuses on analyzing the positive legal regulations governing outsourcing employment relationships and the legal protections for workers in the Indonesian employment system.

The approaches used include a statutory approach, a conceptual approach, and an analytical approach. The legal approach was conducted by examining various regulations governing employment, particularly Law Number 13 of 2003 concerning Employment, as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as Law, and Government Regulation Number 35 of 2021. A conceptual approach was used to analyze legal concepts regarding employment relations, legal protection, justice, and legal certainty, while an analytical approach was used to interpret legal norms to obtain systematic legal arguments.

The legal materials used consisted of primary legal materials in the form of laws and regulations; secondary legal materials in the form of law books, scientific journals, previous research results, and expert opinions; and tertiary legal materials in the form of legal dictionaries and legal encyclopedias. All legal materials were analyzed qualitatively using descriptive analytical methods to provide a comprehensive picture of the legal regulations on outsourcing and the forms of legal protection for workers using the employment contract system.

## **RESULTS AND DISCUSSION**

### **Legal Regulations on the Employment Agreement System (Outsourcing) for Workers Using the Employment Contract System (PKWT)**

An employment relationship is a legal relationship created by an agreement between an employee and an employer, encompassing the elements of work, wages, and orders. These three elements form the basis for the rights and obligations of the parties in industrial relations in Indonesia. The existence of an employment relationship not only has a civil dimension but also a public aspect, as the state is interested in ensuring the fulfillment of workers' rights as part of human rights protection.

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The increasingly competitive business world has forced companies to improve efficiency in human resource management. One emerging strategy is the use of outsourcing, which involves handing over part of a job to another company through a contracting mechanism or the provision of labor services. This system developed as a consequence of economic globalization, which requires companies to focus more on core business activities, allowing for the outsourcing of supporting work to labor providers.

Historically, outsourcing regulations in Indonesia were first explicitly regulated in Law Number 13 of 2003 concerning Manpower. At that time, lawmakers limited outsourcing to work not directly related to the company's primary production process. These restrictions are intended to prevent companies from overusing outsourcing systems, thereby reducing job security for workers.

The development of employment regulations underwent significant changes after the government enacted Law Number 11 of 2020 concerning Job Creation, which was later reaffirmed through Law Number 6 of 2023. This regulation shifted the paradigm of employment relations by providing companies with greater flexibility in using outsourced labor as part of efforts to increase investment and national competitiveness.

These changes were further elaborated in Government Regulation Number 35 of 2021, which regulates Fixed-Term Employment Agreements (PKWT), outsourcing, working hours, rest periods, and termination of employment. Through this regulation, the government no longer limits the types of work that can be outsourced, but rather provides companies with flexibility as long as the employment relationship complies with statutory provisions and workers' rights are fully recognized. However, this flexibility does not eliminate companies' obligation to provide legal protection to outsourced workers. Outsourcing employment relationships must remain implemented based on the principles of balance, legal certainty, justice, and protection, as fundamental principles of Indonesian labor law. Therefore, both the labor provider and the user remain responsible for fulfilling workers' normative rights in accordance with applicable regulations.

In industrial relations practice, most outsourced workers are employed through a Fixed-Term Employment Agreement (PKWT). The use of PKWT is intended to provide flexibility in work, with the type and nature of the activity requiring completion within a specified time. However, in practice, PKWTs are still used for permanent work, resulting in workers losing the opportunity to obtain permanent employment status and lacking long-term job security. This problem demonstrates that the implementation of the outsourcing system depends not only on the quality of regulations but also on the effectiveness of labor supervision. According to

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Soerjono Soekanto, the success of law enforcement is influenced by five factors: legal substance, law enforcement officials, facilities and infrastructure, the community, and legal culture. If any of these factors are not functioning properly, the legal objectives of achieving justice, legal certainty, and benefit will be difficult to achieve.

Based on the legal protection theory proposed by Philipus M. Hadjon, outsourced workers are legal subjects entitled to both preventive and repressive protection. Preventive protection is realized through the establishment of regulations that provide certainty regarding the rights and obligations of the parties, while repressive protection is provided through industrial relations dispute resolution mechanisms in the event of violations of workers' rights. Therefore, the existence of the outsourcing system should not be interpreted as an instrument to reduce legal protection for workers, but rather as a form of flexible employment relations that remains within the framework of national labor law.

### **Legal Protection for Outsourced Workers Using the Employment Contract System (PKWT)**

Legal protection for workers is one of the primary objectives of the establishment of labor law in Indonesia. The state, through various laws and regulations, is obligated to ensure that every worker receives basic rights properly without any discriminatory treatment. This protection becomes even more crucial in the outsourcing system because the employment relationship involves more than one legal entity: the user company, the labor provider company, and the workers themselves.

According to Philipus M. Hadjon, legal protection is an effort provided to legal entities to optimally enjoy their rights through both preventive and repressive protection. In the context of outsourcing employment relationships, preventive protection is realized through the establishment of regulations that clearly define the rights and obligations of the parties, while repressive protection is realized through industrial relations dispute resolution mechanisms in the event of violations of workers' rights.

Law Number 6 of 2023, along with Government Regulation Number 35 of 2021, emphasizes that outsourced workers retain the right to receive the same protection as other workers as long as it relates to the normative rights guaranteed by laws and regulations. Thus, regulatory changes regarding outsourcing do not eliminate companies' obligations to fulfill workers' rights as guaranteed by national labor law.

One of the most fundamental forms of legal protection is the right to wages. Wages are workers' rights received in cash as compensation for work performed according to the employment agreement. Therefore, labor supply companies are obliged to pay wages in

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accordance with the Provincial Minimum Wage (UMP) or Regency/City Minimum Wage (UMK), as well as comply with provisions regarding overtime, allowances, and other financial rights.

In addition to the right to wages, outsourced workers are also entitled to social security benefits as stipulated in Law Number 24 of 2011 concerning the Social Security Administering Body (BSN). Participation in the BPJS Kesehatan (Healthcare and Social Security Agency) and BPJS Ketenagakerjaan (Employment and Social Security Agency) programs is an employer's obligation that cannot be ignored, even if the employment relationship uses a fixed-term contract (PKWT). This social security is an important instrument in providing protection against the risks of workplace accidents, death, old age, and job loss.

The next protection relates to occupational safety and health (K3). Every worker has the right to a safe, healthy, and unharmed work environment free from potential hazards that could threaten their life or health. Therefore, both employers and employees of labor are required to implement occupational safety standards in accordance with Law Number 1 of 1970 concerning Occupational Safety and its various implementing regulations.

In industrial relations practice, one of the most frequently encountered issues is the use of PKWT (Fixed Term Work Agreements) that violate legal provisions. Many companies use repeated employment contracts for permanent jobs, preventing workers from ever having the opportunity to become permanent employees. This practice contradicts the principles of legal certainty and labor protection because it leaves workers in a state of constant uncertainty.

Government Regulation Number 35 of 2021 actually provides clear limitations regarding the use of PKWT, including the term of the agreement, contract extension, as well as the obligation to pay compensation money after the employment relationship ends. This arrangement is intended so that the flexibility of employment relations is not overused by companies to the detriment of workers. In addition to normative protection, agency workers also receive protection through industrial relations dispute resolution mechanisms. If there is a dispute regarding rights, interests, termination of employment relations, or disputes between labor unions, the resolution is carried out through bipartite negotiations, mediation, conciliation, arbitration, and even the Industrial Relations Court in accordance with the provisions of Law Number 2 of 2004. This mechanism is a form of repressive protection provided by the state to ensure the fulfillment of workers' rights.

When analyzed using John Rawls's theory of justice, the protection of outsourced workers is an implementation of the principle of justice as fairness, namely that every individual has the right to receive fair opportunities and treatment in social and economic

relations. Therefore, the flexibility of employment relations through the outsourcing system must not eliminate workers' constitutional rights to obtain decent work, job security, social protection and welfare as guaranteed in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Thus, the effectiveness of legal protection for outsourced workers is not only determined by the existence of statutory regulations, but also by the consistency of the implementation of labor inspections, company compliance with the law, and the courage of workers in fighting for their rights through the available legal mechanisms.

## **CLOSING**

### **Conclusion**

Based on the research results, it can be concluded that the legal regulations regarding the outsourcing system for workers using Fixed-Term Employment Agreements (PKWT) have undergone significant development following the enactment of Law Number 6 of 2023 and Government Regulation Number 35 of 2021. These changes demonstrate a legal policy that provides greater flexibility to businesses in implementing outsourcing systems as part of efforts to increase investment and national economic growth. However, this flexibility does not eliminate the employer's obligation to fulfill workers' normative rights as guaranteed under Indonesian labor law.

Legal protection for outsourced workers has essentially been accommodated through various legal instruments governing the right to wages, social security, occupational safety and health, PKWT compensation, and industrial relations dispute resolution mechanisms. However, the implementation of these provisions still faces various obstacles, including the misuse of PKWT for permanent employment, weak labor supervision, low worker legal awareness, and suboptimal enforcement of sanctions against companies that violate statutory provisions.

### **Suggestion**

1. The government needs to strengthen its labor inspection function by increasing the number and competence of labor inspectors so that the outsourcing system can be implemented in accordance with statutory provisions. Effective supervision will prevent the misuse of PKWT (Fixed Work Agreements) and provide legal certainty for both workers and employers.
  2. Both labor providers and user companies should implement employment relationships based on the principle of good faith by granting all workers' normative rights regardless of their employment status. Compliance with labor law provisions not only creates
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harmonious industrial relations but also increases productivity and business sustainability.

3. Workers also need to improve their understanding of their rights and obligations through education and legal counseling so they have the ability to defend their rights in the event of violations in the employment relationship. Good legal awareness will strengthen the effectiveness of legal protection and support the creation of fair, harmonious, and sustainable industrial relations.

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